EMPLOYEE-MANAGEMENT COOPERATION IN USDA

Report of a Series of Seminars on Working Relations Between Management and Employee Organizations in the U.S. Department of Agriculture.

OFFICE OF PERSONNEL • JANUARY 1962

CONTENT:

WHY THIS REPORT .....

On June 22, 1961 the President appointed a Task Force on Employee-Management Relations in the Federal Service. The Task Force was directed to study the many problems involved in the working relationships between management and employee organizations and to report its findings and recommendations to the President on or before November 30, 1961.

During the course of its studies the Task Force obtained information from the Department and solicited our views and recommendations on policy. The Department in turn set up a special Work Group on Employee-Management Relations which participated in the Personnel Policy Review Meeting at Philadelphia the week of September 25-29, 1961. This Work Group made 17 specific recommendations which were considered by the entire conference at Philadelphia and were then referred to the President's Task Force for its consideration in formulating its own recommendations. It is gratifying to note that the recommendations of our group are basically similar to and consistent with those of the Task Force and the subsequent policies enunciated in the Executive Order. The text of the Order and of our recommendations are included as appendices to this report.

While the precise outcome of the Task Force's work could not be known at the time, there were indications that future employee-management relations in the Federal Service would take on some of the characteristics of those found in private employment. We set about preparing ourselves for such a development. On October 23 a committee recommended to me that a series of training seminars be held as a first step in the task of preparing ourselves for the new era in working relations with employee organizations. This committee consisted of Walter J. Clayton, REA; Seth Jackson, FS; Clarence H. Pals, ARS; and Robert L. Hill, Personnel (Chairman). The plan proposed by the committee was approved and the seminars were held. This is a report of those seminars.

We believe the report may be of value to those who took part in the seminars as a reference and reminder to them of the matter covered; to the many other personnel and operating officials of the Department who may be increasingly active in this field and who may find useful ideas and information here; and to those elsewhere in Government who may be faced with similar problems.

Carl B Barnes

Carl B. Barnes
Director of Personnel

THE FIRST SEMINAR, NOVEMBER 14, 1961
LEADER: Mr. Walter J. Clayton

The earliest organizations of workers were the guilds which were established in Europe beginning about 1022. Guilds were actually societies or associations established for the purpose of upholding the standards and protecting the members of a craft or trade. By about 1250, the guild system had become very strong in such cities as Milan and Florence. In 1356 King Frederick of Prussia attempted to limit their power, but was unsuccessful. The guilds had become potent political forces. Some of them had armed forces, established towns and cities, and controlled votes. The Golden Bull tried to limit the political power of the guilds but to no avail. The guild system continued to grow in size and power in Europe until the 1800's when such strong leaders as Bismarck finally broke their power. In France, the guilds were outlawed at the time of the French Revolution.

In England, guilds never achieved the same degree of power as on the Continent. Following the Black Plague in England, the guilds attempted to force higher wages as a result of labor shortage. This resulted in the first "labor relations law" in the year 1351. This law simply established an automatic penalty of hanging for any laborer or craftsman who requested wages higher than those that existed bofore the plague. This law was modified several times in the next hundred years until it became legal for individual workers to request wage increases. However, groups of workers attempting to do so were held to be guilty of conspiracy. The union movement followed rather closely the pattern established by guilds. In England, the unions became politically oriented. By 1878 the Labor Party had elected their first members of parliament. By 1924, the Party was strong enough to elect their first Prime Minister, Ramsay MacDonald. After World War II, the second Labor Prime Minister, Clement Attlee, was elected. The labor movement in England has a basically different composition than in Continental Europe. Membership consists of laborers, craftsmen, tradesmen, lower-salaried professionals, and intellectuals (the Fabian Society).

In Europe, the labor movement followed the aggressive pattern established by the guilds. The movement has never attracted the intellectuals and small businessmen as in England. It is more "labor" oriented. Since Karl Marx, the Communists have played a strong role in labor organization. The so-called "Communist unions" in Europe have the largest membership. This doesn't mean that the majority of the members are Communists. Membership is open to all and the workers have chosen to join the unions which have demonstrated the ability to get the most for them. Churches have also played an important role in organizing European unions, particularly the Catholic Church in Germany, France and Holland and the Lutheran Church in Sweden. European unions have not fared well under dictatorship. Lenin immediately proceeded to clear out trade union officials after

the 1917 revolution. Hitler, Mussolini, Franco, and Salazar took the same action when they came into power. Union activity on the Continent took a different approach than in America. European unions do not limit themselves to bargaining for their own members on items relating to wages and working conditions. They also bargain on matters relating to the general welfare, i.e., housing.

The labor union movement in America was influenced greatly by the heavy influx of European immigrants. The movement inherited its agressive nature from Europe. Early labor activity in America was combatted by application of the Conspiracy Act imported from England. The unions were almost inevitably ruled against in the courts throughout the 1800's. Laws and Acts which could have benefitted union activities were ruled unconstitutional by the Supreme Court. The courts would grant injunctions against union actions under the provisions of the Sherman Anti-Trust Act (restraint of trade).

The pamphlet which was handed out contains a brief history of the labor movement in America. However, the following highlights are important:

1805--First Craft union with closed shop (Journeymen Cordwainers). The Conspiracy Act was used against them.

1840--Van Buren's E. O. established 10-hour day for Federal employees.

1842--Massachusetts Court outlawed use of the Conspiracy Act.

1868--The first Federal 8-hour law was passed by Congress. It applied only to laborers and mechanics employed by or on behalf of the U. S. Government.

World War I--The Government set and controlled wages and hours of employment.

1926--The Railway Labor Act was passed. It was the first major labor legislation.

1932--The Norris-LaGuardia Act (Anti-Injunction) passed--prohibited Federal injunctions in labor disputes.

1933--National Industrial Recovery Act was passed. It guaranteed rights of employees to organize and bargain collectively. Declared unconstitutional in 1935.

1935--National Labor Relations (Wagner Act) passed. Reaffirmed rights granted by NIRA.

The Wagner Act was declared constitutional in 1937. The Act established the National Labor Relations Board. This Act and the subsequent Taft-

Hartley Act specifically omitted the following groups from coverage:

Federal employees;

Agricultural employees;

Confidential employees dealing only with labor relations matters;

Supervisory employees by 1947 amendments (not excluded by original Wagner Act).

The Taft-Hartley Act also legalized right to work laws, banned closed shops, and gave employers more freedom in discussing union matters with employees.

The NLRB is specifically responsible for reviewing charges of unfair labor practices and holding elections to determine employee representation. The elections are held when a union can show that 30% of the employees of a bargaining unit desire an election. Voting is by secret ballot and is observed by an NLRB agent, a representative of the union involved, and a representative of management. To obtain representation rights, a union must obtain the backing of a majority of those voting in the bargaining unit. Both members and non-members vote. If an election is lost, the union must wait at least a year before again requesting the right to represent the employees.

The problem of defining a bargaining unit is difficult. The NLRB has held that such a unit must be homogeneous. For example, it cannot include both white and blue-collar workers nor can it include both inside and outside plant employees. The NLRB considers the following factors in determining whether particular units are appropriate:

The similarity of duties, skills, wages, and working conditions of the employees involved;

The pertinent collective bargaining history if any, among the employees involved;

The employees' own wishes in the matter. This last refers only to those cases involving professional employees, employees with certain craft skills, and certain other groups where the Board permits employees to vote separately on the question of whether they should be placed in a unit limited to their own group or placed in a larger unit. These are called self-determination elections.

Questions:

Q. How would the National Labor Relations Board's bargaining unit rules apply in the Government? For example, could you have a bargaining unit of typists?

A. No.

Q. Could you have a bargaining unit of Meat Inspectors?

A. Yes. The National Labor Relations Board will recognize a craft as a unit, for example, machinists, bricklayers, patternmakers, etc. But typists have not been considered a craft. However, the National Labor Relations Board has recognized a total insurance office as a unit. This includes typists, bookkeepers, switchboard operators, etc.

Q. On that basis, could a County Office be a bargaining unit?

A. Yes.

Q. Are European unions organized on a craft basis?

A. No, on an industry basis. However there are a few small craft units.

THE SECOND SEMINAR, NOVEMBER 21, 1961
LEADER: Mr. Walter J. Clayton

As we discussed in the last session, the NLRB was formed in 1935 as a result of the passage of the Wagner Act (National Labor Relations Act). The NLRA was amended in 1947 with the passage of the Taft-Hartley Act over the President's veto. Provisions of the basic act were once again amended by the Labor-Management Reporting and Disclosure Act of 1959.

The Reporting and Disclosure Act was passed in 1959 after the McClellan Committee reported finding a need to eliminate or prevent improper practices on the part of labor organizations, employers, and labor relations consultants. The Act deals with the internal operation of unions and with certain labor relations practices of management. The law requires unions to file copies of their by-laws and constitutions with the Department of Labor. Also, unions are required to submit financial reports including assets and liabilities, salaries of officers who receive more than $10,000 per year, and other items.

The Reporting and Disclosure Act also requires reports from both labor organizations and employers of certain actions taken in organizational campaigns. Since these actions, if taken, involve unfair labor practices under the NLRA, some attorneys feel that it may raise questions as to the constitutionality of the Act. There are some court cases pending in

which companies have refused to make such reports on the grounds that they would be self-incriminating.

Those employee organizations with membership composed solely of employees of Federal, State, and local governments or their subdivisions are exempt from the coverage of the Reporting and Disclosure Act.

There were some questions concerning bargaining units during the last session. The NLRB normally recognizes the following types of Bargaining Units:

Industrial: All employees within an industrial operation; excluding supervisors and confidential employees.

Craft: All employees within a given craft, i.e., persons engaged in a specified type of work, usually involving a special skill such as electricians, machinists, etc. The NLRB has established a policy that it will not entertain a petition for a craft unit in the steel, aluminum, wet milling, or lumber industries. The Board has also refused to permit the establishment of craft units in the automobile industry because of the long history of bargaining on an industrial basis.

Departmental: Restricted to employees of a given department in a plant. An example of a departmental unit could be the Power Plant.

Professional: All employees of a recognized profession within a plant, i.e., engineers, chemists, etc. If an entire plant is unionized, the NLRB will hold a separate election for professionals to determine if they wish to be a separate unit or to be bargained for as part of the overall unit. This is called a self-determination election.

Plant: Bargaining unit consisting of all production and maintenance workers in a plant regardless of type of work performed.

THE THIRD SEMINAR, NOVEMBER 28, 1961
LEADER: Mr. Walter J. Clayton

The Landrum-Griffin Act defines a labor organization as any employee committee that meets with management on matters relating to wages, hours of work, grievances, and working conditions.

The overall rate of growth of American unions is declining. Over the last three years, union membership has increased by about 36,000. During the same period of time, the total labor force has increased by about 6,000,000. However, the character of the work force has been changing. More than half of the total work force is now involved in providing services. This has occurred since shortly after the war when the majority of the work force was engaged in production. The unions have had less success in organizing service and white-collar workers. In some of the recent NLRB-conducted elections aimed at organizing white-collar workers, the unions have not been successful. Labor union membership now consists to a great extent of the "aristocrats" of the labor force in terms of wage scales--the steelworkers, auto-workers, craft workers, and other high-paid groups.

The National Labor Relations Board has interpreted the Taft-Hartley Act to provide certain protection to workers even if they are not organized. For example, a company is committing an unfair labor practice if they fire a group of employees who act in a concerted way in presenting a grievance or complaint to management.

Under the NLRA, a company can prevent union representatives from soliciting members during working hours. If the company has a policy on this matter, they may fire an employee who violates it. The company also has the prerogative of forbidding union organizers access to company property.

The NLRB has exhibited a tendency to change their philosophy as membership on the Board changes. An example of this relates to their treatment of REA cooperatives. Originally, the Board would accept a request for an organization election only in those instances when the cooperative involved could be shown to substantially affect interstate commerce. They later changed their stand and would conduct elections in any cooperative. Still later, the Board once again changed positions and would consider elections only in those cooperatives which exceeded a certain annual dollar volume of business.

Questions:

Q. Would the NLRB entertain requests for a bargaining unit of ethnic groups?

A. No, unless the group was a logical bargaining unit on other grounds.

Q. Can management refuse to bargain on items on the basis that they involve management prerogatives?

A. Yes, if they are truly management prerogatives, for example, the change of a plant location.

THE FOURTH SEMINAR, DECEMBER 5, 1961
LEADER: Mr. H. T. Herrick

The report of the President's Task Force was concurred in by the two Departments with the highest percentage of organized employees--the Department of Defense and the Post Office Department. These two agencies are the main source of systematic relationships between management and labor organizations.

The basic right of Federal workers to organize has been recognized for many years. This right is not directly stated in any legislation. However, it is implied in the Lloyd-Lafollette Act of 1912. This Act provides that membership in any organization of Postal employees not affiliated with any outside organization which imposes an obligation to strike against the United States is not grounds for adverse action. Further, "The right of persons employed in the Civil Service of the United States, either individually or collectively, to petition Congress, or any member thereof, ... shall not be denied or interfered with." Such right is also guaranteed by the first amendment to the Constitution.

Twenty-one agencies that provided information to the Task Force had affirmative policies concerning the rights of employees to join organizations. These policies are patterned after a guide suggested by the Federal Personnel Council in 1952. However, most unions apparently found relationships under these policies to be paternalistic and distasteful.

Twenty-two of the reporting agencies had no policy on dealing with employee organizations.

Some agencies, such as TVA and Interior, have gone a long way in setting up formal relationships with organized employee groups. Both TVA and various units (24) of Interior have entered into collective bargaining agreements. However, they do have a statutory basis for this difference. Both management and employee organizations give the impression that their efforts in joint cooperation have been fruitful.

The questionnaire which the Task Force sent to agencies resulted in the following responses:

Facilities and Time: Generally, agencies permit use of government property for union activities, but not official time.

Representation: Most agencies do not have a formal election or recognition procedures.

Extent of Face to Face Dealings: A number of agencies have established a systematic schedule of meetings with organizations. Some of them meet to work out the implementation of personnel policies--but not the policies themselves. Most of the agencies meet with organizations to ask their views on such policies prior to issuance.

Matters for Negotiations: Those agencies that do negotiate cover such matters as wages, job classification, hours and shifts, promotions, appointments, grievances, and working conditions.

With regard to employee councils, agencies hotly defended their usefulness. The unions who testified before the Task Force called them "Company Unions." It is generally felt that an employee council and an organization with exclusive bargaining rights would be incompatible.

The Task Force recommendations included the following:

1. Formal recognition should be granted to organizations which have 10% or more of the employees of an activity in which exclusive bargaining rights have not been granted.

2. Exclusive recognition may be granted to an organization which represents a majority of the employees in a given facility.

3. It is recommended that arbitration not be used to solve impasses.

4. It is recommended that identical appeal rights to the CSC be granted to veterans and non-veterans alike.

THE FIFTH SEMINAR, DECEMBER 12, 1961
LEADER: Mr. Francis J. Olsen

The history of labor-management relations in the Department of Interior goes as far back as 1920. At that time, the Alaska Railroad, which is under the jurisdiction of Interior, had entered into written agreements with several craft unions.

The initial experience with true collective bargaining involved the Bonneville Power Administration. When the BPA was established in 1937, Congress gave the Administrator almost unlimited power to establish rates of pay and working conditions for the industrial workers employed by the Administration. The majority of the blue-collar workers hired for Bonneville came from private industry and were accustomed to unionization. In 1945, the Administrator of BPA recommended that collective bargaining be tried. The recommendation was approved and the major unions in the area formed a craft council for the purpose of bargaining with BPA. During the same year (1945) the first labor agreement was signed.

This experience with BPA led to an overall study in Interior of the possibility of extending the collective bargaining practice to all Bureaus of the Department. The result was a policy issuance released in 1948 which authorized Bureau Chiefs to establish collective bargaining relationships with any group of blue-collar workers when the majority of employees so desired. The basic procedures used by the NLRB served as the nucleus for the procedures involved in implementing the Interior policy.

The Department of Interior now has 24 collective bargaining agreements in force. These are presently limited to blue-collar workers. The number of such workers under agreements consist of about one-third of the total of the industrial-type workers. The collective bargaining agreements in Interior contain the following procedures:

1. Written agreements are between the Bureau Chief and <u>all</u> employees covered;

2. The agreements recognize the paramount authority of Federal Statutes and Executive Orders;

3. Arbitrary and unilateral changes in the agreements are avoided;

4. The "no strike" law is emphasized;

5. The employee-management cooperative aspects are emphasized;

. Management has the responsibility and prerogative of determining what is an appropriate bargaining unit. Unions can appeal decisions on these matters to the Secretary;

7. The Secretary has reserved the right to approve or disapprove arbitration awards.

The determination of appropriate bargaining units is based on flexible criteria. Such units are on craft, plant, project, and regional bases. The factors considered include:

1. Similarity of duties and required skills;

2. Historical nature of union representation;

3. Employee's wishes.

The procedures used for certification of representation follow NLRB practices. Normally, an election is held. However, management may accept designation cards as proof of the wishes of the majority. The Interior policy also provides for a decertification process.

In 1958, the Department of Interior reviewed their labor relations policy. The original policy was essentially reaffirmed. However, some further delegations were made to field officials. Provisions were made to have the Secretary approve basic labor agreements which set out broad boundaries. The appropriate field official now has authority to approve supplementary agreements which cover the specific items subject to bargaining.

THE SIXTH SEMINAR, DECEMBER 19, 1961
LEADER: Mr. Robert L. Hill

The President's Task Force on Employee-Management Relations in the Federal Service has issued its report. The President has directed that an Executive Order be prepared to implement the recommendations of the Task Force. We will discuss steps that the Department will have to take in view of the forthcoming order and the various problem areas that we will face in implementing the order.

It is suggested that we should take the following steps in implementing the President's policy:

1. Issue a Secretary's memorandum announcing the policy;

2. Prepare a new Chapter for Title 8 containing policies, procedures and regulations;

3. Prepare a leaflet to employees to inform them of the new policy;

4. Prepare a statement on this matter to be issued in "Tips to Supervisors";

5. Prepare for further training

   a. Internally

   b. Through the Graduate School;

6. Prepare a guide or manual to be used in negotiations.

Both agencies and employee groups should probably have an opportunity to review the proposed Secretary's Memorandum and the Chapter in Title 8. The guide on negotiating probably should be put out after we have some experience.

One of the immediate problems we will face will relate to the delegation of authority to conduct negotiations. The question was raised as to whether such delegation could follow the present lines of delegation of personnel authority. It was the consensus of the group that this was not practical in view of the varied pattern of such delegation in USDA.

The question was also raised concerning the role of Employee Councils under the new policy. The Task Force report is completely silent on this matter. In areas in which independent employee organizations do not exist, an employee council may still serve a useful purpose.

It was agreed by the group that the matters of defining bargaining units and election and certification procedures will require considerable study. To serve as a basis for discussing bargaining units, the organization of the Meat Inspection Division in ARS was outlined. The employees of this Division are organized by the AFGE to a great extent. The Division has a total of 3,500 employees including approximately 2,500 lay inspectors. They are located in about 100 different stations. The field work is organized in four areas or regions. There could be several interpretations of appropriate bargaining units in this Division. The units could be established on:

1. National basis,

2. At the Station level, or

3. On a regional basis.

The matter of control over the extent of participation by management and personnel people in organization activities was discussed. It is apparent that some rather specific regulations will have to be developed on this matter.

PRESENTATION AT PERSONNEL OFFICERS' LUNCHEON, JANUARY 19, 1962
SPEAKER: Mr. Wilfred V. Gill

(For purposes of reporting, notes on Mr. Gill's talk are presented here as a part of the seminar series)

Personnel administration in the Federal Service moved ahead 50 years this week with the signing by President Kennedy of the Executive Order on Employee-Management Cooperation. This has been an emotion-charged, myth-filled area--labor relations. The new program has been characterized by Secretary Goldberg as moderate and realistic. Yet, it is revolutionary, too, in view of the Government's traditional attitude towards employee organizations in the public service. This program provides an opportunity to employees who wish to do so to collectively advance their interests.

What is new in the program and its philosophy? There are three main themes underlying the policy.

1. Cooperation. This is more than a phrase placed in the title of the E.O. It is a clear directive that management shall have an affirmative attitude toward cooperation with employee groups.

2. Management's basic responsibilities and rights are recognized as well as rights of employee organizations. It recognizes that bilateral action is required and that management must stand on its own feet in serving the public interest.

3. Decentralization is the theme that governs the implementation of the program. Each agency is required to develop its own program. And agency programs should provide room for each echelon of management to accept responsibility in dealing with employee groups.

In addition to the major themes above, several matters with less widespread implications were touched on. These are:

1. The right to join or not to join organizations is reaffirmed--management is required to maintain rigid neutrality on this matter;

2. Restrictions are placed on recognition of organizations that practice discrimination in their membership policies;

3. The Order establishes some new requirements that employee organizations must meet if they want to deal with management;

4. Basic responsibilities on the part of management are outlined;

5. The Order withdraws some consultation privileges which may have previously been accorded bonafide employee organizations if they don't meet the criteria relating to size of membership;

6. The Order provides for increases in appellate rights. Non-veterans in the competitive service are given the same appeal rights as veterans.

The policy states that dealings between management and organizations shall be cooperative. But, it reemphasizes management's responsibilities to defend the public interest, the merit system, the rights of individuals, and to ensure the efficiency of governmental operations. The policy makes no provision for arbitration of disputes that reach an impasse. Management may and must terminate negotiations when they are useless and costly in terms of the public interest.

In summary, this will be a tough new program to develop and implement. It will be difficult to determine when this cooperation is in the best interests of both employees and the public. But it will be fruitful.

Questions:

Q. Are Employee Councils outlawed by the Order?

A. No. The Task Force took into consideration the widespread differences in the extent of employee organization and left this matter to agencies.

Q. What line is drawn between management and unions?

A. It is pretty well left up to agencies to determine who is management. The Commission intends to issue some broad guidelines.

THE SEVENTH SEMINAR, JANUARY 19, 1962
CHAIRMAN: Mr. Robert L. Hill

Following the presentation by Mr. Wilfred V. Gill at the Personnel Officers' Luncheon (see above), the seminar group, the Director of Personnel, and other personnel officers met to discuss a number of issues. Among the matters considered were the following:

Q. How do we get started in this business?

A. The initiative to request recognition rests with the unions. We shall prepare to do business with them. In the meantime, we may expect them to be getting ready to do business with management under the new policies.

Q. What assistance in the form of facilities do we give unions? Time?

A. We will go by the present regulations and practices until they are superseded. The E.O. is in some respects more restrictive than we have been in the past. We are already at work on new regulations.

Q. Do management officials have to resign from organizations when formal recognition is granted to the organization?

A. They may remain members. They may not hold office or be active if there is conflict of interest.

Q. Are we required to go to the Labor Department for assistance on defining bargaining units?

A. No. We know our own organization and we have experts in such matters within USDA.

Q. Will the Department put out guides relating to the definition of bargaining units?

A. The regulations will cover this to the extent that is possible or useful.

Q. What authorities for negotiating and signing agreements will the Department delegate?

A. This remains to be determined. In general, the program will be centrally controlled at the outset and until such time as experience enables us to delegate.

Q. How will coordination be given to relations with employee groups that cut across agency lines?

A. Through the Office of Personnel.

Q. What items are negotiable?

A. Matters relating to terms of employment and working conditions that are within the administrative discretion of the official in charge at the point where the issue arises.

REFERENCES . . . .

1. Brief History of the American Labor Movement. Bulletin No. 1000 (1957 Revision), U. S. Department of Labor. For sale by the Superintendent of Documents, Government Printing Office, Price 35 cents.

2. Federal Labor Laws and Agencies, Bulletin 123 (Revised), U. S. Department of Labor, G.P.O., 40 cents.

3. 1960 Supplement to Bulletin 123, G.P.O., 30 cents.

4. A Policy for Employee-Management Cooperation in the Federal Service: Report of the President's Task Force on Employee-Management Relations in the Federal Service, November 30, 1961, G.P.O., 20 cents.

5. Employee-Management Cooperation in the Federal Service, Executive Order No. 10988, January 17, 1962. Reprinted in this Report, beginning on page 25.

6. Collective Bargaining in the Federal Civil Service: A Study of Labor-Management Relations in United States Government Employment, by Dr. Wilson R. Hart. Harper and Brothers, Publishers, New York, August 1961. Price, $6.50.

THE SEMINAR LEADERS . . . .

WALTER J. CLAYTON, REA, is Labor Relations Advisor to the rural electric and telephone cooperatives. He teaches a course in Labor Relations at Johns Hopkins University, Baltimore. He was formerly with the National Labor Relations Board..... FRANCIS J. OLSEN is Labor Relations Representative, Division of Personnel Management, Department of Interior. He has been active in negotiating and administering the 24 collective bargaining agreements entered into by various units within his Department.. ... H. T. HERRICK is Assistant to the Assistant Secretary of Labor. He was a staff member of the President's Task Force on Employee-Management Relations in the Federal Service..... ROBERT L. HILL is Employee-Management Relations Officer, Office of Personnel..... WILFRED V. GILL is Assistant to the Chairman, U. S. Civil Service Commission. He served as alternate Vice-Chairman of the President's Task Force.....

The seminars were taped by GALEN YATES, INF. The summaries were drafted by SYLVESTER PRANGER, ARS.

APPENDICES

UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

January 18, 1962

SECRETARY'S MEMORANDUM NO. 1486

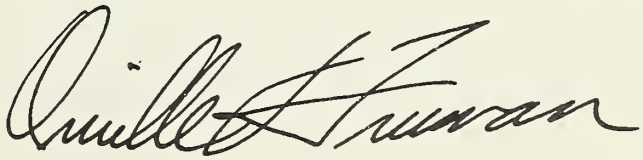
Employee-Management Cooperation

The President has issued an Executive Order (No. 10988, dated January 17, 1962) in which he states the general policies which govern relations between management and employee organizations in the Federal Service. It is the purpose of this Memorandum to call your attention to the Order, to add my strong personal endorsement to it, and to initiate its implementation within the Department.

Employees have an obvious and proper interest in the terms of their employment and the conditions under which they work. Through their organizations they may contribute substantially to the formulation, improvement, and orderly administration of these matters which so vitally affect them. It is our firm intention and policy to cooperate with the representatives of employee organizations with the goal in mind of making the Department a model employer and providing the conditions under which each employee will strive to be a conscientious and efficient public servant.

It shall be a matter for decision by each individual whether he joins or refrains from joining an employee organization. His right freely to make this decision shall be respected and his status as a member or non-member shall not of itself be given any weight in official actions affecting him. Likewise, each employee shall be free to assist and actively participate in the affairs of an employee organization, provided there is no conflict of interest involved and the activity is otherwise proper.

There are many decisions to be made and procedures to be devised to implement the President's Order within the Department. I am asking the Director of Personnel to take the lead in doing this. He shall consult with the representatives of employee organizations in the formulation of these policies and procedures Meanwhile, each agency head is requested to provide a copy of this Memorandum to each employee in his agency so that our employees generally may be informed of this new and significant development in employee-management cooperation.



Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

10988

EMPLOYEE-MANAGEMENT COOPERATION IN
THE FEDERAL SERVICE

WHEREAS participation of employees in the formulation and implementation of personnel policies affecting them contributes to effective conduct of public business; and

WHEREAS the efficient administration of the Government and the well-being of employees require that orderly and constructive relationships be maintained between employee organizations and management officials; and

WHEREAS subject to law and the paramount requirements of the public service, employee-management relations within the Federal service should be improved by providing employees an opportunity for greater participation in the formulation and implementation of policies and procedures affecting the conditions of their employment; and

WHEREAS effective employee-management cooperation in the public service requires a clear statement of the respective rights and obligations of employee organizations and agency management:

Now, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by section 1753 of the Revised Statutes (5 U. S. C. 631), and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

Section 1. (a) Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity. Except as hereinafter expressly provided, the freedom of such employees to assist any employee organization shall be recognized as extending to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress or other appropriate authority. The head of each executive department and agency (hereinafter referred to as "agency") shall take such action, consistent with law, as may be required in order to assure that employees in the agency are apprised of the rights described in this section, and that no interference, restraint, coercion or discrimination is practiced within such agency to encourage or discourage membership in any employee organization.

(b) The rights described in this section do not extend to participation in the management of an employee organization, or acting as a representative of any such organization, where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of an employee.

Section 2. When used in this order, the term "employee organization" means any lawful association, labor organization, federation, council, or brotherhood having as a primary purpose the improvement of working conditions among Federal employees, or any craft, trade or industrial union whose membership includes both Federal employees and employees of private organizations; but such term shall not include any organization (1) which asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in any such strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike, or (2) which advocates the overthrow of the constitutional form of Government in the United States, or (3) which discriminates with regard to the terms or conditions of membership because of race, color, creed or national origin.

Section 3. (a) Agencies shall accord informal, formal or exclusive recognition to employee organizations which request such recognition in conformity with the requirements specified in sections 4, 5 and 6 of this order, except that no recognition shall be accorded to any employee organization which the head of the agency considers to be so subject to corrupt influences or influences opposed to basic democratic principles that recognition would be inconsistent with the objectives of this order.

(b) Recognition of an employee organization shall continue so long as such organization satisfies the criteria of this order applicable to such recognition; but nothing in this section shall require any agency to determine whether an organization should become or continue to be recognized as exclusive representative of the employees in any unit within 12 months after a prior determination of exclusive status with respect to such unit has been made pursuant to the provisions of this order.

(c) Recognition, in whatever form accorded, shall not --

(1) preclude any employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable law, rule, regulation, or established agency policy, or from choosing his own representative in a grievance or appellate action; or

(2) preclude or restrict consultations and dealings between an agency and any veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with any religious, social, fraternal or other lawful association, not qualified as an employee organization, with respect to matters or policies

which involve individual members of the association or are of particular applicability to it or its members, when such consultations or dealings are duly limited so as not to assume the character of formal consultation on matters of general employee-management policy or to extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

Section 4. (a) An agency shall accord an employee organization, which does not qualify for exclusive or formal recognition, informal recognition as representative of its member employees without regard to whether any other employee organization has been accorded formal or exclusive recognition as representative of some or all employees in any unit.

(b) When an employee organization has been informally recognized, it shall, to the extent consistent with the efficient and orderly conduct of the public business, be permitted to present to appropriate officials its views on matters of concern to its members. The agency need not, however, consult with an employee organization so recognized in the formulation of personnel or other policies with respect to such matters.

Section 5. (a) An agency shall accord an employee organization formal recognition as the representative of its members in a unit as defined by the agency when (1) no other employee organization is qualified for exclusive recognition as representative of employees in the unit, (2) it is determined by the agency that the employee organization has a substantial and stable membership of no less than 10 per centum of the employees in the unit, and (3) the employee organization has submitted to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of objectives. When, in the opinion of the head of an agency, an employee organization has a sufficient number of local organizations or a sufficient total membership within such agency, such organization may be accorded formal recognition at the national level, but such recognition shall not preclude the agency from dealing at the national level with any other employee organization on matters affecting its members.

(b) When an employee organization has been formally recognized, the agency, through appropriate officials, shall consult with such organization from time to time in the formulation and implementation of personnel policies and practices, and matters affecting working conditions that are of concern to its members. Any such organization shall be entitled from time to time to raise such matters for discussion with appropriate officials and at all times to present its views thereon in writing. In no case, however, shall an agency be required to consult with an employee organization which has been formally recognized with respect to any matter which, if the employee organization were one entitled to exclusive recognition, would not be included within the obligation to meet and confer, as described in section 6(b) of this order.

Section 6. (a) An agency shall recognize an employee organization as the exclusive representative of the employees in an appropriate unit when such organization is eligible for formal recognition pursuant to section 5 of this order, and has been designated or selected by a majority of the employees of such unnt as the representative of such employees in such unit. Units may be established on any plant or installation, craft, functional or other basis which will ensure a clear and identifiable community of interest among the employees concerned, but no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized. Except where otherwise required by established practice, prior agreement, or special circumstances, no unit shall be established for purposes of exclusive recognition which includes (1) any managerial executive, (2) any employee engaged in Federal personnel work in other than a purely clerical capacity, (3) both supervisors who officially evaluate the performance of employees and the employees whom they supervise, or (4) both professional employees and nonprofessional employees unless a majority of such professional employees vote for inclusion in such unit.

(b) When an employee organization has been recognized as the exclusive representative of employees of an appropriate unit it shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Such employee organization shall be given the opportunity to be represented at discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. The agency and such employee organization, through appropriate officials and representatives, shall meet at reasonable times and confer with respect to personnel policy and practices and matters affecting working conditions, so far as may be appropriate subject to law and policy requirements. This extends to the negotiation of an agreement, or any question arising thereunder, the determination of appropriate techniques, consistent with the terms and purposes of this order, to assist in such negotiation, and the execution of a written memorandum of agreement or understanding incorporating any agreement reached by the parties. In exercising authority to make rules and regulations relating to personnel policies and practices and working conditions, agencies shall have due regard for the obligation imposed by this section, but such obligation shall not be construed to extend to such areas of discretion and policy as the mission of an agency, its budget, its organization and the assignment of its personnel, or the technology of performing its work.

Section 7. Any basic or initial agreement entered into with an employee organization as the exclusive representative of employees in a unit must be approved by the head of the agency or any official designated by him. All agreements with such employee organizations shall also be subject to the following requirements, which shall be

expressly stated in the initial or basic agreement and shall be applicable to all supplemental, implementing, subsidiary or informal agreements between the agency and the organization.

(1) In the administration of all matters covered by the agreement officials and employees are governed by the provisions of any existing or future laws and regulations, including policies set forth in the Federal Personnel Manual and agency regulations, which may be applicable, and the agreement shall at all times be applied subject to such laws, regulations and policies;

(2) Management officials of the agency retain the right, in accordance with applicable laws and regulations, (a) to direct employees of the agency, (b) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees, (c) to relieve employees from duties because of lack of work or for other legitimate reasons, (d) to maintain the efficiency of the Government operations entrusted to them, (e) to determine the methods, means and personnel by which such operations are to be conducted; and (f) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

Section 8. (a) Agreements entered into or negotiated in accordance with this order with an employee organization which is the exclusive representative of employees in an appropriate unit may contain provisions, applicable only to employees in the unit, concerning procedures for consideration of grievances. Such procedures (1) shall conform to standards issued by the Civil Service Commission, and (2) may not in any manner diminish or impair any rights which would otherwise be available to any employee in the absence of an agreement providing for such procedures.

(b) Procedures established by an agreement which are otherwise in conformity with this section may include provisions for the arbitration of grievances. Such arbitration (1) shall be advisory in nature with any decisions or recommendations subject to the approval of the agency head; (2) shall extend only to the interpretation or application of agreements or agency policy and not to changes in or proposed changes in agreements or agency policy; and (3) shall be invoked only with the approval of the individual employee or employees concerned.

Section 9. Solicitation of memberships, dues, or other internal employee organization business shall be conducted during the non-duty hours of the employees concerned. Officially requested or approved consultations and meetings between management officials and representatives of recognized employee organizations shall, whenever practicable, be conducted on official time, but any agency may require that negotiations with an employee organization which has been accorded exclusive recognition be conducted during the non-duty hours of the employee organization representatives involved in such negotiations.

Section 10. No later than July 1, 1962, the head of each agency shall issue appropriate policies, rules and regulations for the implementation of this order, including: A clear statement of the rights of its employees under the order; policies and procedures with respect to recognition of employee organizations; procedures for determining appropriate employee units; policies and practices regarding consultation with representatives of employee organizations, other organizations and individual employees; and policies with respect to the use of agency facilities by employee organizations. Insofar as may be practicable and appropriate, agencies shall consult with representatives of employee organizations in the formulation of these policies, rules and regulations.

Section 11. Each agency shall be responsible for determining in accordance with this order whether a unit is appropriate for purposes of exclusive recognition and, by an election or other appropriate means, whether an employee organization represents a majority of the employees in such a unit so as to be entitled to such recognition. Upon the request of any agency, or of any employee organization which is seeking exclusive recognition and which qualifies for or has been accorded formal recognition, the Secretary of Labor, subject to such necessary rules as he may prescribe, shall nominate from the National Panel of Arbitrators maintained by the Federal Mediation and Conciliation Service one or more qualified arbitrators who will be available for employment by the agency concerned for either or both of the following purposes, as may be required: (1) to investigate the facts and issue an advisory decision as to the appropriateness of a unit for purposes of exclusive recognition and as to related issues submitted for consideration; (2) to conduct or supervise an election or otherwise determine by such means as may be appropriate, and on an advisory basis, whether an employee organization represents the majority of the employees in a unit. Consonant with law, the Secretary of Labor shall render such assistance as may be appropriate in connection with advisory decisions or determinations under this section, but the necessary costs of such assistance shall be paid by the agency to which it relates. In the event questions as to the appropriateness of a unit or the majority status of an employee organization shall arise in the Department of Labor, the duties described in this section which would otherwise be the responsibility of the Secretary of Labor shall be performed by the Civil Service Commission.

Section 12. The Civil Service Commission shall establish and maintain a program to assist in carrying out the objectives of this order. The Commission shall develop a program for the guidance of agencies in employee-management relations in the Federal service, provide technical advice to the agencies on employee-management programs, assist in the development of programs for training agency personnel in the principles and procedures of consultation, negotiation and the settlement of disputes in the Federal service, and for

the training of management officials in the discharge of their employee-management relations responsibilities in the public interest; provide for continuous study and review of the Federal employee-management relations program and, from time to time, make recommendations to the President for its improvement.

Section 13. (a) The Civil Service Commission and the Department of Labor shall jointly prepare (1) proposed standards of conduct for employee organizations and (2) a proposed code of fair labor practices in employee-management relations in the Federal service appropriate to assist in securing the uniform and effective implementation of the policies, rights and responsibilities described in this order.

(b) There is hereby established the President's Temporary Committee on the Implementation of the Federal Employee-Management Relations Program. The Committee shall consist of the Secretary of Labor, who shall be chairman of the Committee, the Secretary of Defense, the Postmaster General, and the Chairman of the Civil Service Commission. In addition to such other matters relating to the implementation of this order as may be referred to it by the President, the Committee shall advise the President with respect to any problems arising out of completion of agreements pursuant to sections 6 and 7, and shall receive the proposed standards of conduct for employee organizations and proposed code of fair labor practices in the Federal service, as described in this section, and report thereon to the President with such recommendations or amendments as it may deem appropriate. Consonant with law, the departments and agencies represented on the Committee shall, as may be necessary for the effectuation of this section, furnish assistance to the Committee in accordance with section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U. S. C. 691). Unless otherwise directed by the President, the Committee shall cease to exist 30 days after the date on which it submits its report to the President pursuant to this section.

Section 14. The head of each agency in accordance with the provisions of this order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under section 14 of the Veterans' Preference Act of 1944, as amended. Each employee in the competitive service shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 14 of the Veterans' Preference Act. Any recommendation by the Civil Service Commission submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency. This section shall become effective as to all adverse actions commenced by issuance of a notification of proposed action on or after July 1, 1962.

Section 15. Nothing in this order shall be construed to annul or modify, or to preclude the renewal or continuation of, any lawful agreement heretofore entered into between any agency and any representative of its employees. Nor shall this order preclude any agency from continuing to consult or deal with any representative of its employees or other organization prior to the time that the status and representation rights of such representative or organization are determined in conformity with this order.

Section 16. This order (except section 14) shall not apply to the Federal Bureau of Investigation, the Central Intelligence Agency, or any other agency, or to any office, bureau or entity within an agency, primarily performing intelligence, investigative, or security functions if the head of the agency determines that the provisions of this order cannot be applied in a manner consistent with national security requirements and considerations. When he deems it necessary in the national interest, and subject to such conditions as he may prescribe, the head of any agency may suspend any provision of this order (except section 14) with respect to any agency installation or activity which is located outside of the United States

/s/ JOHN F. KENNEDY

THE WHITE HOUSE,

January 17, 1962.

PHILADELPHIA MEETING . . . .

The USDA Personnel Policy Review Meeting was held at Philadelphia the week of September 25 - 29, 1961 ... One of the eight work groups at that meeting was concerned with Employee-Management Relations ..... The work group made 17 recommendations, quoted below from the report of the meeting .....

RECOMMENDATION 59

Maintain a favorable climate toward employee affiliation with employee organizations. Supervisors shall neither overtly encourage nor discourage either directly or indirectly such affiliation, in accordance with the letter and spirit of the current policy of the Department.

RECOMMENDATION 60

Cooperate with duly recognized representatives of such organizations through consultation and negotiation to develop personnel policies, programs and procedures which will serve the best interests of both employees and the general public.

RECOMMENDATION 61

That it be the stated policy of USDA that employee organizations shall recognize their responsibilities to the public as well as to their members. Such organizations should promote measures for the improvement of employee welfare to help create favorable employee morale and an environment within which the USDA mission can be carried out in an effective and efficient manner.

RECOMMENDATION 62

That it be the stated policy of USDA that employee organizations shall recognize the basic responsibility of USDA management to direct, manage and control program activities and personnel in the best interests of the Department and the public.

RECOMMENDATION 63

That it be the stated policy of USDA that employee organizations shall exercise reasonable prudence in utilizing time and facilities which may be provided.

RECOMMENDATION 64

That it be the stated policy of USDA that employee organizations shall demonstrate a spirit of mutual cooperation with management in accomplishing the mission of the USDA.

RECOMMENDATION 65

That it be the stated policy of USDA that employee organizations shall encourage their members as individuals to promote the improvement of programs and administrative procedures to achieve more efficient government operations and service to the public.

RECOMMENDATION 66

USDA consult with employee organizations and individual employees concerning employment matters within the limits of management discretion.

RECOMMENDATION 67

When a majority of employees within an appropriate bargaining unit elect to designate an employee organization as its representative for consultation and negotiation with management, that the Department recognize such organization as the exclusive bargaining agent for such consultation and negotiation and deal with its authorized representatives on that basis, and prescribe necessary standards and procedures to be followed.

RECOMMENDATION 68

The Secretary prescribe minimum standards of conduct to which employee organizations must conform in order to be eligible for recognition for either consultation or negotiation. These standards shall include compliance with requirements of law applicable to organizations to which government employees may belong; procedures which insure free and democratic choice by members of officers and bargaining representatives, including elections by secret ballot; acceptance of members under uniform standards without discrimination of grounds of race, religion, national origin, or sex; full accounting to members on the basis of acceptable audits for all funds handled by the organization; and no affiliation with any organization which fails to qualify under the foregoing standards.

RECOMMENDATION 69

An individual employee shall, even if in an established bargaining unit, retain his right to name any representative that he may desire to negotiate grievances with management.

RECOMMENDATION 70

In those instances in which a group of employees have a grievance such as discriminatory practices against members of the group or interference with their rights to join or refrain from joining organizations, or other types of grievances affecting groups of employees, the affected employee shall have the right to request any approved employee organization or other representative to negotiate with management and to assist them in the appeals procedure.

RECOMMENDATION 71

When a dispute arises between an employee organization and management under a collective bargaining agreement, each party will name a representative. These two will agree upon a third person. The three will attempt to resolve the dispute. If no resolution is achieved through this process, the normal appeals procedure shall be followed.

RECOMMENDATION 72

That it be the policy of USDA that officials and supervisors of the Department may join and participate in the business of employee organizations, including the holding of office. However, an individual, who, as part of his assigned responsibility, negotiates with designated representatives of such organizations on matters pertaining to employment conditions may not hold an office in any organization if such office includes among its responsibilities representation of employees on these matters.

RECOMMENDATION 73

Recognizing the overall benefits to be derived from employee organizations, it shall be the policy of USDA to look with favor upon reasonable requests for the use of official time and space for holding meetings and for use of official facilities and equipment for informational and educational purposes, including information about the purposes of employee economic organizations. However, management must maintain control over the use of official time, space and facilities to insure proper utilization in the overall public interest.

RECOMMENDATION 74

It is further recommended that it be the USDA policy that attendance by employees at business meetings of other than officially sponsored welfare and recreational organizations and employee councils, and other than attendance at such meetings deemed by management to be in the interest of improved performance of assigned work responsibilities, shall be on the employee's own time, and no travel expense shall be charged to the government. However, supervisors should be liberal in granting annual leave to employees to attend such meetings.

RECOMMENDATION 75

We recommend that the USDA Office of Personnel better coordinate the work of agency employee councils through designation of the chairman and vice chairman of the respective agency councils as members and alternate members of the overall USDA Employee Council, and that it encourage each agency in USDA to establish an Agency employee council.

Growth Through Agricultural Progress